APPEAL NO. 041827
FILED SEPTEMBER 1, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on July 14, 2004. The hearing officer determined that the appellant/cross-respondent (claimant herein) reached maximum medical improvement (MMI) on May 22, 2003; that the claimant's impairment rating (IR) is seven percent; and that the claimant had disability from October 3, 2002, and continuing through January 11, 2004. The claimant files a request for review in which he argues that the determinations of MMI and IR are against the great weight of the evidence. The respondent/cross-appellant (carrier herein) filed a response to the claimant's request for review urging affirmance of the determinations of MMI and IR. The carrier, however, files a request for review of the determination on the period of disability, asserting that disability ended as a matter of law on the date of MMI, May 22, 2003, and that any determination of disability beyond May 22, 2003, was against the great weight and preponderance of the evidence. There is no response in the file from the claimant to the carrier's request for review.

DECISION

Finding sufficient evidence to support the decision of the hearing officer and no reversible error in the record, we affirm the decision and order of the hearing officer.

The hearing officer did not err in determining that the claimant reached MMI on May 22, 2003, with a seven percent IR, as certified by the Texas Workers' Compensation Commission-appointed designated doctor. The claimant asserts that the designated doctor's certification is contrary to the great weight of the other medical evidence and requests adoption of his treating doctor's certification, which he believes fully evaluates his condition. Specifically, he argues that the designated doctor's rating is flawed because the doctor does not rate the left shoulder given that the compensable injury included thoracic spine and bilateral shoulders. There was no evidence, however, that the doctor did not consider the left shoulder in preparing his report. The claimant's own treating doctor at the time agreed with the certification of MMI and the IR by the designated doctor. Whether the great weight of the other medical evidence was contrary to the opinion of the designated doctor is basically a factual determination. Texas Workers' Compensation Commission Appeal No. 93459, decided July 15, 1993. We view the report of the claimant's treating doctor as representing a difference in medical opinion, which does not rise to the level of the great weight of medical evidence contrary to the designated doctor's report. The hearing officer's MMI/IR determination is not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

Regarding the issue of disability, which is defined in Section 401.011(16) as the inability because of a compensable injury to obtain and retain employment at the preinjury wage, we note that is a separate concept than MMI as defined in Section

401.011(30). It is quite possible that an injured employee can continue to have disability after achieving MMI, although the employee would not be entitled to temporary income benefits. *See* Section 408.101. We find no error, as a matter of law, for the hearing officer to determine that the claimant had disability even if MMI has previously been achieved.

We have also held that the question of disability is a question of fact for the hearing officer. Texas Workers' Compensation Commission Appeal No. 93613, decided August 24, 1993. Section 410.165(a) provides that the hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as of the weight and credibility that is to be given to the evidence. It was for the hearing officer, as trier of fact, to resolve the inconsistencies and conflicts in the evidence. Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). This is equally true regarding medical evidence. Texas Employers Insurance Association v. Campos, 666 S.W.2d 286, 290 (Tex. App.-Houston [14th Dist.] 1984, no writ). The trier of fact may believe all, part, or none of the testimony of any witness. Taylor v. Lewis, 553 S.W.2d 153, 161 (Tex. Civ. App.-Amarillo 1977, writ ref'd n.r.e.); Aetna Insurance Co. v. English, 204 S.W.2d 850 (Tex Civ. App.-Fort Worth 1947, no writ). An appeals-level body is not a fact finder and does not normally pass upon the credibility of witnesses or substitute its own judgment for that of the trier of fact, even if the evidence would support a different result. National Union Fire Insurance Company of Pittsburgh, Pennsylvania v. Soto, 819 S.W.2d 619, 620 (Tex. App.-El Paso 1991, writ denied). When reviewing a hearing officer's decision for factual sufficiency of the evidence, we should reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Cain, *supra.*

The decision and order of the hearing officer are affirmed.

The true corporate name of insurance carrier is **PACIFIC EMPLOYERS INSURANCE COMPANY** and the name and address of its registered agent for service of process is

ROBIN MOUNTAIN
ACE USA
6600 EAST CAMPUS CIRCLE DRIVE, SUITE 200
IRVING, TEXAS 75063.

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Gary L. Kilgore
Appeals Judge

CONCUR:

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Chris Cowan
Appeals Judge

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Margaret L. Turner
Appeals Judge